

REMARKS

In response to the Office Action mailed December 13, 2004, please consider the following. In the office action, claims 1-38 and 78-97 were pending, and claims 8-32, 34, 36, 37, 85, 86 and 89 were withdrawn as being directed to a non-elected invention. Claims 1-7, 33, 35, 38, 78-84, 87, 88 and 90-91 stand rejected. In this response, claims have been amended. Reconsideration of the present application as amended and in view of the remarks that follow is respectfully requested.

The Office Action refers to the restriction requirement and applicants' election of claims and asserts that the species of Figure 1 does not have an artificial ligament as recited in claims 8, 9, 12-14, 85 and 86. It is respectfully submitted that the specification discloses that any of the implant embodiments can be artificial ligaments, as discussed at page 2, lines 1-4 and also at page 8, lines 3-22, and as also supported by original claims 8, 9, and 12-14, which claims form part of the original disclosure. Thus, examination of claims 8, 9, 12-14 and 85-86 is believed proper.

The Office Action further asserts that Figure 1 does not have an implant comprising a substantially inelastic material as recited in claims 37 and 89. It is respectfully submitted that, for example, on page 2, line 8 of the specification, the implant embodiments of the application are referred to generically as "implants", and it is disclosed there that the implants can have an inelastic body. The implant in Fig. 1, like the other implant embodiments, can be comprised of a substantially inelastic material as disclosed. Thus, examination of claims 37 and 89 with the election of the species of Fig. 1 is believed proper.

Claims 1-7, 33, 35, 38 and 97 were rejected under 35 USC §101 as being directed to non-statutory subject matter. Specifically, it was asserted that claims 1, 2, 3, 4, and 97 include within their scope part of the human anatomy. Claims 1-4 and 97 have been amended to broaden their scope and clarify that no portion of the human anatomy is within the scope of these claims. Accordingly, withdrawal of this basis of the rejection of claims 1-7, 3, 35, 38 and 97 is respectfully requested.

Claims 1-7, 33, 35, 38, 78-84, 87, 88 and 90-97 were rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the

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subject matter which applicants regard as the invention. Specifically, claim 1 was rejected since it was asserted to be unclear what end of the implant is being referred to. Claim 1 has been amended to clarify the end being referred to in original claim 1. Accordingly, the amendment is not a narrowing amendment, but presents original claim 1 with a same scope but modified form to address any clarity concerns that might exist. Claims 5, 78 and 91 were rejected for certain elements lacking antecedent basis. These claims have been amended to address the concerns raised in the Office Action and provide antecedent basis for these original claim elements. These amendments have also not narrowed the scope of any of the claims 5, 78 and 91 and therefore each of the claims is entitled to its full range of equivalents under the doctrine of equivalents.

Claims 1-7, 33, 35, 38, 78-84, 87, 88 and 90-97, as understood, were rejected under 35 USC §102 as being anticipated by U.S. Patent No. 4,790,303 to Steffee. The rejection is respectfully traversed since Steffee does not disclose each element of these claims, nor does it disclose the arrangement of elements recited in these claims. Specifically, Steffee discloses a wire cable 70 that is spaced from the anterior faces of adjacent vertebrae, and is engaged to fasteners 50, 52 through openings 71 adjacent the driving ends of the fasteners. When the fasteners are engaged to the vertebrae, the driving ends project from the respective vertebrae. Wire cable 70 is not positioned in either of the vertebra, but rather is spaced from each of the vertebra. In addition, the ends 70a, 70b of wire cable 70 overlap one another and are engaged to one another with a connector 72 that is located outside the vertebrae, the disc space and also located between the fasteners 50, 52.

In contrast with the disclosure of Steffee, claim 1 recites "an implant having a first end and an opposite second end, at least a portion of one of said first and second ends structured for positioning when in use in a tunnel formed in a first vertebral body; and at least one anchor engageable to the first vertebral body for attaching said at least a portion of said one of said first and second ends of said implant to the first vertebral body when positioned in the tunnel with said implant extending extradiscally to a second vertebral body." Thus, Steffee fails to disclose a spinal stabilization system including the combination and arrangement of elements recited in claim 1, and cannot anticipate it. Accordingly, withdrawal of this basis of the rejection of claim 1 is respectfully requested.

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Claims 2-7, 33, 35 and 38 depend from claim 1 and distinguish Steffee at least for the reasons claim 1 distinguishes Steffee. Additional reasons can be provided to support the independent patentability of at least some of these claims, such as Steffe failing to disclose an implant positioned in a tunnel formed in a second vertebra, the orientations of the implant in the tunnels, attachment of the ends of the implant to the anchor, and the positioning of an anchor along the end of the implant, for example. Accordingly, withdrawal of the rejection of these claims is also requested.

With respect to claim 78, it recites "an implant having a first end and an opposite second end, at least a portion of one of said first and second ends being positionable in a tunnel formed in a first vertebral body; and at least one anchor engageable to the first vertebral body for attaching said one of said first and second ends of said implant to the first vertebral body, wherein when in the tunnel said one of said first and second ends of said implant extends along an angle relative to an axial plane of the spinal column in the range of about 0 degrees to about 80 degrees." As discussed above, Steffe does not disclose a spine stabilization system including this combination and arrangement of elements, and therefore cannot anticipate claim 78. Accordingly, withdrawal of the rejection of claim 78 is respectfully requested.

Claims 79-84, 87, 88 and 90 depend from claim 78 and distinguish Steffee at least for the reasons claim 78 does. Additional reasons can be provided to support the independent patentability of at least some of these claims, such as Steffe failing to disclose an implant positioned in a tunnel formed in a second vertebra, the orientations of the implant in the tunnels, attachment of the ends of the implant to the anchor, and the positioning of an anchor along the implant, for example. Accordingly, withdrawal of the rejection of these claims is also requested.

Claim 91 recites "an implant having a flexible, conformable body extending between a first end and an opposite second end, at least a portion of one of said first and second ends being adapted for positioning in a tunnel formed in a first vertebral body; and at least one anchor engageable to the first vertebral body for attaching said one of said first and second ends of said implant to the first vertebral body, wherein when in the tunnel said one of said first and second ends and said at least one anchor form an acute angle relative to an axial plane of the spinal column and said at least one anchor is positionable in the tunnel in engagement with the

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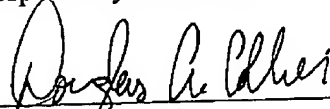
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respective end of the implant." As discussed above, Steffe does not disclose a spine stabilization system including this combination and arrangement of elements, and therefore cannot anticipate claim 91. Accordingly, withdrawal of the rejection of claim 91 is respectfully requested.

Claims 92-97 depend from claim 91 and allowable at least for the reasons claim 91 is allowable. Additional reasons can be provided to support the independent patentability of at least some of these claims, such as Steffe failing to disclose an implant positioned in a tunnel formed in a second vertebra, the orientations of the implant in the tunnels, and an implant structured for positioning on anterior faces of vertebrae, for example. Accordingly, withdrawal of the rejection of these claims is also requested.

In view of the above amendments and remarks, it is believed that claims 1-38 and 78-97 are in condition for allowance, and a Notice of Allowance is hereby solicited. The Examiner is welcome to contact the undersigned to resolve any outstanding issues with regard to the present application.

Respectfully submitted:



Douglas A. Collier
Reg. No. 43,556
Krieg DeVault LLP
2800 One Indiana Square
Indianapolis, Indiana 46204-2079
Phone: (317) 636-4341
Facsimile: (317) 636-1507

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